

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Bail Appl.No. 6990 of 2007()

CRIME NO. 371/07 OF NEMOM POLICE STATION

PETITIONERS/ACCUSED NOS. 2 TO 4

1. VINOD, AGED 29, S/O KRISHNANKUTTY,
SNEHALAYAM, KULAKKUDIYOOR KONAM,
NEMOM P.O.
2. ANEESH, AGED 23, S/O RAJU,
SURABHI, J.P.LINE, TC 53/2396,
KULAKKUDIYOORKONAM, NEMOM P.O.
3. SANTHOSH, AGED 25, S/O BABURAJ,
THUNDUVILA VEEDU, J.P.LINE,
KULAKKUDIYOORKONAM, NEMOM P.O.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

B.A.No. 6990 of 2007

Dated this the 19th day of November, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 2 to 4. They face allegations in a crime registered for offences punishable, inter alia, under Section 308 I.P.C. The crux of the allegations against the petitioners is that they along with the first accused had attempted to collect goonda levy from a person engaged in the activity of dealing in sand. As he refused to pay levy, the petitioners allegedly picked up a quarrel with him and the first accused planted a dangerous stab injury on the victim. The prosecution alleged that all the accused had acted in furtherance of their common intention.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Even allegedly they did not wield any dangerous weapon. They have no criminal antecedents. In these circumstances the petitioners may be granted anticipatory bail, it is prayed.

3. The learned Prosecutor opposes the application. He also concedes that the petitioners have not even allegedly wielded any weapon. But it is the very case of the prosecution that the miscreants, who were present along with the first accused, had shared the common intention of the first accused. The learned Prosecutor submits that there is no merit in the contention that the petitioners are not named in the F.I.R. In fact they have described differently in the F.I.R. But that does not mean that the petitioners are not named in the F.I.R.

4. I have considered all the relevant inputs. I find merit in the opposition by the learned Prosecutor. There are no features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioners. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the learned

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Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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